IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION LD.NO.2583 OF 2004

Babajan Mohammed Ibrahim & Ors. ...Petitioners.

Versus

The Municipal Corporation of Gr.Bombay & Ors. ...Respondents.

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Mr. P. M. Havnur for the Petitioners.
Ms. P.A. Purandare for Respondent No.1.

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CORAM : DALVEER BHANDARI, C.J. &
DR. D.Y. CHANDRACHUD, J.
3rd December 2004.

P.C.:

In these proceedings under Article 226 of the Constitution, the Petitioners seek (i) a declaration that they are entitled to the benefits of a Slum Rehabilitation Scheme "applicable in the locality" for Final Plot No.568-B, Town Planning Scheme III, Opposite Allied Industrial Estate, Mahim, Mumbai and (ii) an appropriate writ restraining the Respondents from demolishing the garage of the Petitioners on Final Plot No.568-B. An affidavit in reply has been filed on behalf of the Municipal Corporation. We have heard Learned Counsel for the parties. For the reasons that we now indicate, we find that there is no merit in the petition.

Final Plot No.568-B falls within the area of Town Planning Scheme III of Mahim and is reserved for Conservancy Staff Quarters. The plot vested in the Municipal Corporation free from all encumbrances upon the enforcement of the Town Planning Scheme under the Maharashtra Regional and Town Planning Act, 1966. The Petitioners are in unauthorised occupation and possession of the structures situated on the plot of land. The Municipal Corporation issued a notice under Section 89 of the Act. The Notice was challenged by the First Petitioner who instituted a suit in the City Civil Court. The suit was dismissed by the City Civil Court on 15th December 2001.The appeal filed by the First Petitioner was dismissed by a Learned Single Judge of this Court on 19th May 2003. The Learned Single Judge arrived at the finding that the First Petitioner was an encroacher and in view of the settled position laid down by the Supreme Court, he was not entitled to obtain an order of injunction against the Municipal Corporation which is the true owner of the plot. The plea for the grant of alternative accommodation was specifically rejected holding that under the provisions of the M. R. T. P. Act, 1966, the land has vested in the Corporation and the real owner of the plot

has been lawfully compensated. While dismissing the First Appeal, the Learned Single Judge held that vacant and peaceful possession of the plot should be handed over to the Municipal Corporation within a period of six weeks. The entitlement of the Petitioners for alternative premises under the Slum Rehabilitation Scheme has been considered and rejected in the judgment of the Learned Single Judge. The Petitioners have stated that the Letters Patent Appeal filed against the judgment of the Learned Single Judge was disposed of by a Division Bench of this Court on 17th September 2004 on the ground of maintainability.

In the affidavit in reply, the Municipal Corporation has stated that the plot has not yet been declared as a slum and no Slum Rehabilitation Scheme has been introduced for the redevelopment of the plot under reference. Though an administrative decision has been taken by the Competent Authority to take steps for declaring the plot as a slum area for redevelopment under the S. R. A. Scheme, the affidavit clarifies that the area occupied by the structure of the Petitioners is to be excluded. In any event, as of date no part of the plot has been declared as a slum.

The Petitioners are encroachers. The plot is vested in the Municipal Corporation in pursuance of the Town Planning Scheme which has statutory force under the Maharashtra Regional and Town Planning Act, 1966. The case of the First Petitioner has been examined and negatived both by the City Civil Court and by a Learned Single Judge of this Court in First Appeal. The action that was pursued by the Municipal Corporation under Section 89 of the Act was in accordance with law. No case for interference is made out. The Petition is accordingly rejected.

CHIEF JUSTICE.

DR.D. Y. CHANDRACHUD, J.